

To: Justice Shah, Law Commission of India
From: UChicago International Human Rights Legal Clinic and Nazdeek
Date: 9 September 2014
Re: The Right to Adequate Housing in New Delhi, India

***THE RIGHT TO ADEQUATE HOUSING IN NEW DELHI,
INDIA***

NAZDEEK



INTRODUCTION

From 14 to 28 March, 2014, three students in the International Human Rights Clinic at the University of Chicago Law School, Brian Ahn, Alex Kiles and Marco Segatti, accompanied by Clinical Professor Sital Kalantry and Clinical Lecturer in Law Brian Citro, in partnership with [Nazdeek](#), a legal capacity-building organization based in India, spent two weeks in New Delhi, researching housing rights and policy. The goal was to identify the major problems and challenges faced by slum-dwellers and homeless people in the city.

During this time, the University of Chicago team met with policy researchers, activists, urban planners, human rights lawyers and Government officials, including judges and heads of land-owning agencies. The team also visited several communities of slum-dwellers that are either at risk of eviction, recently re-located by the Government, or in temporary housing. The trip also included visits to several night shelters for homeless individuals and in-depth interviews with local community leaders and stakeholders. Prior to conducting the trip, the University of Chicago students utilized various online sources and legal resources to better understanding the housing landscape in Delhi.

Part I of this report delves into the history of housing litigation in Delhi and provides a synopsis of key cases. Part II discusses the institutional agencies in Delhi chiefly concerned with housing. Part III provides an analysis of numerous housing policies recently enacted within Delhi and India more broadly. Part IV concludes with observations from our trip. Attached is an appendix containing case studies of the communities we visited during our trip: Kathputli colony, Baljeet Nagar and Lohar Basti.

PART I

HOUSING LITIGATION IN INDIA

This portion of the memorandum will examine Indian jurisprudence on the right to adequate housing in six parts. First, it will describe the constitutional and jurisprudential foundations for the right to adequate housing. Second, it will discuss the early Supreme Court cases and how the Court views housing rights. Third, it will analyze how later cases used policy objectives to limit housing rights. Fourth, it will look to recent high court decisions on the right to housing. Fifth, it will summarize the findings from the caselaw. Sixth, it will seek to anticipate the way forward and how the information may be used to create new policies.

1) Foundation of the Right to Adequate Housing in India

Though the right to housing is not explicitly recognized in the Indian Constitution, the directive principles of the Constitution urge the state to adopt policies regarding socio-economic rights.¹ In particular, Articles 38, 39 and 46 have been linked to the right to adequate housing.² Though these principles are not enforceable in court, they indicate the framers' intent of assuring the Government of India applies the principles when making law and aims to secure certain individual rights.

The right to housing has also been judicially recognized as part of the fundamental rights enshrined in Part III of the Constitution. In particular, courts have recognized the right to housing through the right to life and personal liberty in Article 21 and the right to reside and settle in any part of the territory of India in Article 19(1)(e).

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors.*,³ the Supreme Court was faced with the task of defining the right to life under

1
INDIA CONST. Part IV.

2
See, e.g., Municipal Corporation v. Nawab Khan Gulab Khan, (1997) S.C.C. 121 (India).

3
□ (1981) 2 S.C.R. 516.

Article 21. The case concerned a British national who was arrested and detained in an Indian jail. While in jail, she experienced great difficulty meeting both her attorney and members of her family. The Court used the case to develop the constitutional right to life by expanding the definition of life beyond just physical existence.⁴ The Court held that the right to life should be construed broadly “so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.”⁵ The Court went further by describing the right to life as including “the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and *shelter* and facilities for reading, writing and expressing oneself in diverse forms”⁶ The decision made it clear that the right to life included the basic necessities required to live with human dignity, including shelter.

In two cases involving housing decided on the same date, the Court reaffirmed its reasoning in *Francis Coralie Mullin*. In the landmark housing case, *Olga Tellis v. Bombay Municipal Corporation*,⁷ the Bombay Municipal Corporation made a decision to forcibly evict and deport pavement dwellers who had constructed huts on public roads in Bombay. The pavement dwellers challenged the evictions on the grounds that evicting the dwellers would deprive them of their right to life under Article 21 of the Constitution, as well as the right to settle in any part of the country and to carry on any occupation, guaranteed under Article 19.

The Court assumed that the dwellers would be deprived of livelihood if they are evicted from their settlements. The issue, therefore, was whether the right to life encompasses the right to livelihood. The Court found that it does, stating that “the right to life conferred by Article 21 is wide and far reaching . . . no person can live without the means of living, that is, the means of livelihood. . . . Deprive a person of

4
□ *Id.* at 517.

5
□ *Id.* at 528.

6
□ *Id.* at 529 (emphasis added).

7
□ (1985) 2 S.C.R Supl. 51.

his right to livelihood and you shall have deprived him of his life.”⁸ The Court then stated that the pavement dwellers typically come to Bombay in search of work because of the scarcity of employment in rural areas. Taken together, the Court established that if the dwellers are evicted, they will be deprived of their livelihood, and thus, their lives.

However, the Court realized that the Constitution does not guarantee an absolute right to life. Rather, the Court suggested that a deprivation of the right to life is procedurally protected. A deprivation of the right to life can occur, but it must be “fair, just and reasonable.”⁹ Applied to the dwellers case, the Court found that the procedures set forth to remove the dwellers (the Bombay Municipal Corporation Act) from public property were not unreasonable, unfair, or unjust. The public properties the dwellers occupied were intended as footpaths for the public, without which, pedestrians will be forced to walk on the streets, resulting in traffic hazards.¹⁰ Thus, the Court denied the substantive right to encroach on the public property, but endowed an important procedural safeguard for dwellers prior to eviction.

The same day as *Olga Tellis*, the Court also decided another housing case, *Chandru v. State of Tamil Nadu*.¹¹ The case concerned the Tamil Nadu Slum Areas Act, under which the State of Tamil Nadu sought to remove slums that were likely to become a source of danger to public health or sanitation. The slum-dwellers sought to restrain the State from evicting the dwellers without providing alternative accommodation and basic amenities, while the State argued that it had provided alternative accommodations for the dwellers prior to eviction. The Court was satisfied that the State had “adopted a benevolent and sympathetic policy in regard to the slum dwellers”¹² because steps were being taken to improve the slums or provide

8 □ *Id.* at 79-80.

9 □ *Id.* at 85.

10 □ *Id.* at 87-88.

11 □ (1985) 2 S.C.R. Supl. 100.

12 □ *Id.* at 107.

alternative accommodations. In deciding the constitutional issues, the Court referred to the reasoning of *Olga Tellis*.¹³ By affirming *Olga Tellis*, *Chandru* demonstrates the Court's willingness to expand the right to life to include the right to livelihood.

2) Protecting the “Weaker” Segments of Society

Following *Olga Tellis*, the Court decided a number of important housing cases by focusing on the state's obligations towards the “weaker” segments of society. The “weaker” sections of society is mentioned in Article 46 of the Constitution; however, it is not defined.¹⁴ The Court in *Shantistar Builders v. Narayan Khimalal Totame*¹⁵ explains that the “weaker” section includes members of the Scheduled Castes and Scheduled Tribes, as well as millions of other underprivileged Indians.¹⁶

In *Shantistar Builders*, a group of pavement dwellers approached the Court seeking enforcement the Urban Land Act, which imposes a ceiling on vacant land in urban agglomerations in order to prevent the concentration of urban land to a few powerful people. Each urban agglomeration was divided into a class, which had a ceiling in terms of the land that agglomeration could hold. All vacant land in excess of the ceiling would go to the State, which would use it for other public purposes.¹⁷ The Government exempted certain lands for the ceiling requirement, provided that the land exempted would be used to house the “weaker” sections of society.¹⁸

Certain dwellers contended that the builders had not followed the conditions of the exemption. The Court reaffirmed the notion that the right to life is broad and

13 □ *Id.* at 108.

14 □ INDIA CONST. art. 46.

15 □ A.I.R. 1990 S.C. 630.

16 □ *Id.* at ¶¶ 11-12.

17 □ *Id.* at ¶ 4.

18 □ *Id.* at ¶ 6.

includes the “[b]asic needs of man,” which “have traditionally been accepted to be three – food, clothing and shelter.”¹⁹ It added that this “would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.”²⁰ The Court next stated that “for a human being [shelter] has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual.”²¹ The Court further held that “[t]he Constitution aims at ensuring fuller development of every child,” which is “possible only if the child is in a proper home.”²² Ultimately, the Court ordered the Government to provide guidelines for who is included in the “weaker” sections of society in order to clarify the duties imposed on the private builders through the exemptions.

The theme of protecting the “weaker” classes continued in *Chameli Singh v. State of Uttar Pradesh*.²³ The case was brought by landowners whose properties were subject to acquisition by the state in order to provide housing for the “Scheduled Castes.” The owners argued that acquisition of their land would violate their right to life because their lands were their source of livelihood. The Court first discussed the right to shelter in the context of the right to life, stating that the “[r]ight to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right . . . [T]he State should be deemed to be under at obligation to secure [the right to shelter] for its citizens, of course subject to its economic budgeting.”²⁴

The Court then addressed the landowners’ concerns regarding the government’s acquisition of land. It noted that the Government had an urgent need to

19 □ *Id.* at ¶ 9.

20 □ *Id.*

21 □ *Id.*

22 □ *Id.*

23 □ (1996) 2 S.C.C. 549.

24 □ *Id.* at ¶ 8.

act because of the deplorable conditions in which the Scheduled Castes lived. Thus, the Court found the Government's eminent domain actions to be valid, stating that "[s]o long as the exercise of [eminent domain] is for public purpose, the individual's right of an owner must yield place to the larger public purpose."²⁵ This case is especially important because it signals the Court's willingness to uphold a redistributive policy of the legislature directed toward providing adequate housing for the "weaker" segments of society. Moreover, by denying the landowners, the Court implied that policies designed to benefit the worst off cannot be used by privileged members to benefit themselves.

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*,²⁶ the Court reiterated its concern for the "weaker" classes of society. The case involved a petition by pavement dwellers who had constructed hutments on public footpaths. The State sought to remove the structures, which the Bombay Municipal Corporation Act empowers the State to do. The issue for the Court was whether the procedure set forth for the deprivation of property is reasonable and fair. The Court concluded that the Government took reasonable action to remove the hutments, stating that the footpaths are designed for public safety and security.²⁷ Thus, removing encroachments as soon as they appear is appropriate. If the Government allows the encroachments for a period of time, then reasonable notice (described as 10 days to two weeks) would be required to remove them. In the case, the Government states it gave 21 days notice, which the court found to be reasonable and fair procedure.

The Court then turned to the question of whether the dwellers are entitled to alternative settlement prior to removal. The Government stated that certain dwellers who existed prior to a set cutoff date would not be removed without alternative accommodation. The cutoff date was determined by a survey of dwellers in which the dwellers were given identity cards in order to prove they were in the slums prior to the date. The Government provided three schemes of providing alternative housing to

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□ *Id.* at ¶ 18.

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□ (1997) 11 S.C.C. 123.

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□ *Id.* at ¶ 5.

these individuals. The Court reiterated the constitutional duty of the state to provide for the “weaker” sections of society, referencing Articles 38, 39, and 46 of the Constitution.²⁸ The Court stated the importance of creating a housing scheme that would allow the “weaker” sections to be integrated into society.²⁹

Thus, the Court allowed the eviction of the dwellers, but it conditioned their removal upon the provision of alternative accommodations, pursuant to existing housing schemes. The Court noted, however, that not all those encroaching on public property were entitled to alternative accommodations upon removal, as this would encourage people to “abuse the judicial process to avail of such remedy by encroaching public property.”³⁰ The Court reasoned that the State had a positive obligation to bridge the inequality gap by providing for the “weaker” members of society.³¹

These early Supreme Court housing cases demonstrate the Court’s concern for the “weaker” segments of society in deciding housing matters. In later decisions, the Court would focus more on policy objectives.

3) Public Policy Limitations

Following these cases, the Supreme Court seemed to shift its focus from a concern for the “weaker” sections of society to looking to public policy objectives in analyzing housing rights. *Almitra Patel v. Union of India*³² was not a housing rights case, but demonstrated the Court’s shift in its view of slum dwellers. The case was a public interest litigation brought by an environmentalist in order to force Delhi to deal with the massive problem of waste management in the city. The Court criticized the slum-

28 □ *Id.* at ¶ 17.

29 □ *Id.* at ¶ 18.

30 □ *Id.* at ¶ 20.

31 □ *Id.* at ¶ 16.

32 □ A.I.R. 2000 S.C. 1256.

dwellers as the main cause of Delhi’s pollution and waste problem. It stated that the system of “slum creation” in Delhi “gives rise to domestic waste being strewn on open land in and around the slums.”³³ Rather than showing concern for the slum dwellers’ lack of adequate housing, as in the earlier cases, the Court declared that “[r]ewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket.”³⁴

In *Narmada Bachao Andolan v. Union of India*,³⁵ the Court rejected the notion that the forced relocation of thousands of people would be a violation of the Constitution. The case concerned a dam project that was expected to develop the Gujarat region by providing electricity and irrigation from the Narmada River. The project planned for the displacement of thousands of people in order to build the dam. A non-governmental organization that opposed the construction of the dam brought a petition to the Court to halt the construction. The group argued that forcible displacement of tribals and farmers for a project not in the national or public interest amounted to a violation of their fundamental rights under Article 21.³⁶ The group further stated that the project was not in the national interest because of the high cost and “flawed assumptions” regarding its environmental impact.³⁷

Though the Court found that the tribals that will be displaced were of the “weaker sections” of society, it concluded that they “will not be a victim of displacement.”³⁸ It reasoned that the compensation provided to the displaced would result in a gain for the tribals. Further, even with a forced move, the rehabilitation

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□ *Id.* at ¶ 14.

34

□ *Id.*

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□ A.I.R. 2000 S.C. 3751.

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□ *Id.* at “General Issues Relating to Dis-Placement of Tribals and Alleged Violation of the Rights under Article 21 of the Constitution.”

37

□ *Id.*

38

□ *Id.*

package would result in a higher standard of living. Thus, “[t]he displacement of the tribals and other persons would not per se result in violation of their fundamental or other rights. . . . The gradual assimilation in the main stream of the society will lead to betterment and progress.”³⁹ In addition, the Court found that the project was in the national interest in order to deal with the growing need of water in the country. The Court looked to an analysis of the project by the World Bank in weighing the costs and benefits and found that the dam would be in the national interest.⁴⁰

These two cases demonstrate a shift in the Court’s analysis and view of slum dwellers. Rather than focusing on slum-dwellers as the “weaker” segment of society, the Court used the policy objective of modernization in deciding *Narmada*. In addition, the Court’s hostile view of dwellers in *Almitra Patel* suggests a shift away from concern for dwellers rights toward an approach that views dwellers as criminals and free-riders.

4) Delhi High Court Decisions

The Delhi High Court (DHC) has shown considerable concern for dwellers in housing cases. In *Court On Its Own Motion v. Union of India*,⁴¹ the DHC initiated a public interest litigation based on a newspaper article of a destitute woman who died on a public street after giving birth. The Court ordered the Government of Delhi to build five secured shelters exclusively for destitute, pregnant, and lactating women. The Government responded that such shelters existed already. However, these are not state funded homes and do not care for pregnant and lactating women. In addition, these homes have limited capacity.⁴² The Government submitted a petition to investigate more thoroughly the situation on the ground. While the court agreed that this should be done, it ordered the Government to provide at least two shelters in the meantime,

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□ *Id.*

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□ *Id.*

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□ WP(C) 5913/2010 (Del. HC Jan. 12, 2011).

42

□ *Id.* at ¶ 5.

in order to avoid tragedies while the Government moves “like a tortoise” to address the situation.⁴³ Though the case did not involve housing rights and the court did not analyze a right to housing, the court’s willingness to act *sua sponte* to protect the pregnant and lactating women with shelter during a critical period of their lives suggests the court’s sensitivity towards the importance of shelter for members of society in need.

*Dr. Vijay Kumar Gupta v. Delhi Development Authority*⁴⁴ concerned a plot of land that was allotted to an individual through the Rohini Residential Scheme. After allotment, the individual paid the balance due and submitted all requisite documents in order to gain possession of the land.⁴⁵ Years later, when he went to the plot, a house had already been erected. Another individual had fraudulently purchased the plot from the Government and conveyed it in a separate sale to the individual currently living on the plot. The DHC found that the original purchaser cannot be deprived of his property rights and held that he is entitled to an allotment of an alternative plot of the same characteristics as the original.⁴⁶

In *Dharampal Singh v. GNCT of Delhi*,⁴⁷ seventy dwellers sought relief after their hutments were demolished for a planned hospital expansion. The court first ordered the Delhi Urban Shelter Improvement Board (DUSIB) to visit and report the status of the area to the court. After an extension was granted, the DUSIB reported that the hutments had been demolished, but the dwellers remained, of which sixty provided proof of residence.⁴⁸ The DHC opined that the hospital expansion would benefit a large population of the city, and in order for it to proceed immediately,

43 □ *Id.* at ¶ 10.

44 □ WP(C) 16830/2006 (Del. HC Oct. 24, 2008).

45 □ *Id.* at ¶¶ 3-6.

46 □ *Id.* at ¶ 38.

47 □ WP(C) 1798/2011 (Del. HC Oct. 10, 2011).

48 □ *Id.* at ¶ 3.

ordered DUSIB to submit a proposal for temporary rehabilitation of the dwellers who were eligible.⁴⁹ Thus, it allowed the eviction for public policy reasons, but protected the dwellers by ordering relocation to the eligible dwellers.

In *HAQ v. Government of NCT. Delhi*,⁵⁰ the DHC reiterated the policy of India for rehabilitation of slum dwellers, and ordered the state to file an affidavit with regards to the state's survey of the dwellers prior to demolition of hutments.⁵¹ This is especially important because there are a number of children and pregnant/lactating women in the community.⁵² In the interim, the DHC ordered the state to immediately visit the site to ensure amenities and temporary shelter was available for those that had their hutments demolished.⁵³ Though the opinion is short and light on facts, it reveals the DHC's position towards dwellers who have had their hutments demolished without due process.

In *Wazirpur Bartan Nirmata Sangh v. Union of India*,⁵⁴ the government used the Land Acquisition Act to acquire land in order to move squatters from public land to the acquired land. Under the scheme, the rehabilitation of dwellers was limited to those who occupied the land at a specific cut-off date (31 Jan 1990, which was later extended to 30 Nov 1998).⁵⁵ Analyzing the policy, the DHC stated that “[t] authorities cannot acquire land and thereby make the farmers, who have held the land for generations, landless and displace them with the object to use the same very land for

49

□ *Id.* at ¶ 14.

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□ WP(C) 2033/2011 & CM No. 4327/2011 (Del. HC Mar. 25, 2011).

51

□ *Id.* at ¶ 4.

52

□ *Id.* at ¶¶ 5-6.

53

□ *Id.* at ¶ 11.

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□ (2003) 103 DLT 654 (Nov. 29, 2002).

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□ *Id.* at ¶ 4.

"unplanned development" rather than planned development."⁵⁶ The court was concerned with the incentives such a policy would create: encroachers would be encouraged to encroach on public lands, and if removed, would expect new land to be acquired for them.⁵⁷ On appeal, the Supreme Court stayed the order; thus the policy remains in effect.

In *Sudama Singh and Others v. Government of Delhi and Anr.*,⁵⁸ four writ petitions were filed by slum-dwellers seeking intervention of the DHC to relocate and rehabilitate the petitioners before their hutments are demolished. In the Master Plan for Delhi-2021, the Government created a rehabilitation and relocation plan for dwellers residing in slum clusters prior to a cutoff date. However, in the case, the Government began demolition without providing relocation.⁵⁹ The dwellers, who met the criteria for relocation, claimed this to be a violation of the right to life under Article 21, as well as a violation of human rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). The Government argued that the dwellers were occupying "Right of Way" land on the road, which does not entitle the dwellers to compensation or rehabilitation.⁶⁰ Without a rehabilitation policy for encroachers on public Right of Way land, the Government argued it had no obligation to resettle the dwellers.⁶¹

The DHC first discussed India's international obligations under the UDHR and ICESCR, as well as declarations made under The Habitat I Vancouver

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□ *Id.* at ¶ 34.

57

□ *Id.*

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□ WP (C) Nos. 8904/2009, 7735/2007, 7317/2009 & 9246/2009 (Del. HC Dec. 17, 2009) at ¶

59

□ *Id.* at ¶ 5.

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□ *Id.* at ¶ 6.

61

□ *Id.* at ¶ 14.

Declaration and the International Year of the Homeless.⁶² The DHC then shifted its focus to the constitutional guarantee of the right to shelter, as discussed in the Supreme Court.⁶³ The court noted that “when a family living in a Jhuggi⁶⁴ is forcibly evicted, each member loses a ‘bundle’ of rights – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity.”⁶⁵ The court found that refusing to provide alternative land by reason of “right of way” is “completely contrary to the State’s policy which governs relocation and rehabilitation of slum dwellers.”⁶⁶ In particular, the dwellers set up the hutments decades ago, when there was no road or known “right of way.” It would have been impossible for the dwellers to anticipate that the land would be required for a future road, and thus, the Government cannot deny relocation. Thus, the court ordered the parties to engage meaningfully regarding the relocation of the dwellers.⁶⁷

*P.K. Koul v. Estate Officer and Anr. and Ors.*⁶⁸ concerned several displaced Central Government employees residing in Delhi after the Government failed to protect the group from ethnic cleansing in their home region of the Kashmir Valley. After fleeing the area and settling in Delhi, the group was served eviction notices. The

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□ *Id.* at ¶¶ 27-34.

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□ Discussed in Sections I and II above.

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A jhuggi is a slum dwelling typically made of mud and corrugated iron. *Jhuggi*, Oxford Dictionaries, <http://www.oxforddictionaries.com/us/definition/english/jhuggi> (last visited 30 July 2014).

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□ *Sudama Singh*, WP (C) Nos. 8904/2009, 7735/2007, 7317/2009 & 9246/2009 at ¶. 44.

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□ *Id.* at ¶ 50.

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□ *Sudama Singh*, WP (C) Nos. 8904/2009, 7735/2007, 7317/2009 & 9246/2009 at ¶. 54.

68

□ WP (C) No. 15239/2004 & SM No. 11011/2004 (Del. HC Nov. 30 2010).

group filed petitions seeking protection from forced eviction, arguing that the Government failed to take into account the circumstances and situation.⁶⁹

The DHC examined the rights to shelter under Articles 19(1)(e) and 21 of the Constitution and followed Supreme Court precedent that described the right to life as encompassing the right to shelter. The court stated that the case raised “an important aspect of right to shelter of these displaced persons under Article 19(1)(e) and which has been declared by the Supreme Court to be an integral and essential part also of their right to life.”⁷⁰ The court then discussed the right to shelter under international obligations, such as ICESCR, the Declaration of Social Progress and Development, and the Vancouver Declaration of Human Settlements.⁷¹ The court then shifted its focus on the group as internally displaced persons (IDPs), who should be protected from persecution.⁷² Eviction would force the group to return to a persecuted area, which would be an unacceptable situation based on a “hyper-technical construction of statutory provision.”⁷³ The court also recognized that the state failed in protecting the workers, which forced the workers to occupy land in Delhi.⁷⁴ Put together, the court found that the occupation could not be considered an unauthorized occupation of public property.⁷⁵

In *Prem Singh v. Govt. of NCT of Delhi*,⁷⁶ 106 dwellers petitioned in order to prevent the Government from removing them from their slum cluster without

69

□ *Id.* at ¶ 17.

70

□ *Id.* at ¶ 29.

71

□ *Id.* at ¶¶ 30-31.

72

□ *Id.* at ¶ 40.

73

□ *Id.* at ¶ 107.

74

□ *Id.* at ¶ 109.

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□ *Id.* at ¶ 113.

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relocation. The Government argued that, in a survey of the dwellers, only seven members were eligible for such rehabilitation.⁷⁷ In a short opinion, the DHC ordered the Government to consider the claims of each individual dweller, and delayed any removal until this was done.⁷⁸

5) Summary of Right to Adequate Housing in India

The cases discussed above demonstrate a number of factors courts will consider in housing litigation:

- The right to life under Article 21 includes the right to livelihood (*Olga Tellis, Chandru, Shantistar Builders, Shantistar Builders, Chameli Singh, Dr. Vijay Kumar Gupta, PK Koul*)
- Deprivation of fundamental rights, such as the right to life and shelter, must be reasonable and fair (*Olga Tellis, Nawab Khan Gulab Khan*)
- The right to housing is linked to a “bundle of rights” (*Shantistar Builders, Sudama Singh*)
- The courts are concerned with protecting the “weaker” sections of society (*Chameli Singh, Court on its own Motion*).
- Alternative accommodation must be provided prior to eviction (*Nawab Khan Gulab Khan, Dharampal Singh, HAQ, Sudama Singh*)
- Only the dwellers that have met statutory requirements are entitled alternative accommodation (*Nawab Khan Gulab Khan, Dharampal Singh, Prem Singh, HAQ*)
- Policy objectives can loom large when analyzing whether displacement is valid (*Narmada Bachao Andolan, Dharampal Singh, HAQ*)

[□] WP(C) 4155/2010 (Del. HC Jan. 17 2011).

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[□] *Id.* at ¶ 5.

78

[□] *Id.* at ¶ 12.

- The “Right of Way” litigation should consider all factors (*Sudama Singh, PK Koul*)
- Stages in the process:
 - Prior to eviction, there must be fair and reasonable procedure (*Olga Tellis, Nawab Khan Gulab Khan*).
 - Prior to determining who which dwellers are eligible for alternative accommodation, the Government cannot destroy or evict dwellers (*Prem Singh*)
 - If eviction has already occurred, but the Government has not determined which dwellers are eligible for rehabilitation, the Government must provide temporary accommodation while determining it (*Dharampal Singh, HAQ*)

PART II

INSTITUTIONAL AGENCIES

This Part of the Memorandum provides a description of the most important agencies, both Government branches, as well as local bodies, operating in the housing sector in Delhi: 1) the Delhi Development Authority; 2) the Municipal Corporation of Delhi; 3) the Delhi Urban Shelter Improvement Board.

1) Delhi Development Authority (DDA)

A. Introduction

The DDA is a land-owning agency of the Central Government, dependent on and under the supervision of, the Ministry of Urban Development and Poverty Alleviation. The agency's most important functions consist in the formulation, implementation and revision of the Delhi Master Plan, as well as in the direct acquisition and development of land. The DDA owns more land than any other land-owning agency in Delhi and is therefore the key actor in Government redevelopment and rehabilitation projects in the city.

B. Statutory Framework

The DDA was set up by the Delhi Development Act, 1957 and is under the direct supervision of the Ministry of Urban Development and Poverty Alleviation of the Central Government.

1) Organizational Structure

Art. 3.3 of the DDA Act 1957 regulates membership to the DDA, which is composed by:

- 1) A chairman, who is, ex officio, the Lieutenant Governor of the National Capital Territory of Delhi;
- 2) A vice-chairman appointed by the Central Government;
- 3) The Commissioner of the Municipal Corporation of Delhi, ex officio;

D. Main Functions

Art. 7 lists the following functions of the DDA:

- 1) Acquire, hold and dispose of property, both movable and immovable, as it may deem necessary and for the realization of public purposes (see art. 15 and ff.);
- 2) Formulate a Master Plan that defines “the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out;”
- 3) Prepare a zonal development plan for each of the zones into which Delhi may be divided (art. 8.2 further specifies what exactly a zonal development plan can do);
- 4) Submit the “Plans” to the Central Government for approval;

2) Municipal Corporation of Delhi (MCD)

A. Introduction

The MCD is an autonomous body, which governs the largest portion of the National Capital Territory of Delhi (NCTD), with the exception of the areas which are under the control of the New Delhi Municipal Corporation (or Council) (NDMC) and the Delhi Cantonment Board (NCB).⁷⁹ In 2012, the MCD has been trifurcated into three smaller Municipal corporations: the North Delhi Municipal Corporation, the South Delhi Municipal Corporation and the East Delhi Municipal Corporation.

B. Statutory Framework

The MCD was established by the enactment of the Delhi Municipal Corporation Act, 1957 (with revisions in 1993 after the enactment of the 74th Constitutional Amendment).

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[□] See CITY DEVELOPMENT PLAN, DEPARTMENT OF URBAN DEVELOPMENT DELHI, E-1 (3) (2006) (In 2006, this was 94% of the total area of the NCTD).

C. Organizational Structure

The MCD is divided between an elective wing, and an administrative one.

The “Administrator” of the Corporation is the Lieutenant Governor of the NCTD (art. 2.1 DMC Act 1957). The Central Government nominates a Commissioner for the Corporation (art. 54).

The jurisdictional area of the Corporation is divided into 12 zones comprising 134 wards. Each zone has one office, with one Commissioner as its head.

The Corporation is elected for a five-years term (art. 4.1).

The Corporation is composed of three further municipal authorities (art. 44): the Commissioner, the Standing Committee, and the Wards Committee.

Most of the relevant powers to buy, rent, and dispose off property, are entrusted to the Commissioner, who has very few duties to report such operations to the Standing Committee (art. 197 ff.). Similar points apply for the “maintenance, construction and improvement” of public streets.

D. Functions

Artt. 42 and 43 of the DMC Act regulate the *mandatory* and *discretionary* functions of the MCD. Those related to housing include:

- 1) The construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences;
- 2) The construction and maintenance of municipal markets and slaughter houses; the regulation and abatement of offensive or dangerous trade or practices; the securing or removal of dangerous buildings and places;
- 3) The construction, maintenance, and improvements of public streets, causeways and the like;
- 4) The lighting, watering and cleansing of public streets and other public places; the maintenance of public parks, gardens or recreation grounds.

- 5) The construction and maintenance of houses for persons with disabilities (mental, physical and so on) and children;

3) Delhi Urban Shelter Improvement Board (DUSIB)

A. Statutory Framework

DUSIB has been set up by the Delhi Urban Shelter Improvement Board Act, in 2010 by the legislative assembly in the National Capital Territory of Delhi.

B. Organizational Structure

Art. 3.4 regulates membership to the Board, and states that the latter is constituted by (among others):

- 1) A Chairman, who is the Chief Minister;
- 2) The Vice-Chairman of the DDA;
- 3) The Commissioner of the MCD;

C. Functions

The functions of the Board, include⁸⁰:

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□ Note: for the purposes of this Act, the following definitions apply:

Jhuggi: a structure whether temporary or *pucca*, of whatever material made, with the following characteristics, namely:

- (i) it is built for residential purpose;
- (ii) its location is not in conformity with the land use of the Delhi Master Plan;
- (iii) it is not duly authorized by the local authority having jurisdiction;
- (iv) it is included in a *jhuggi jhopri basti* declared as such by the Board, by notification;

Jhuggi jhopri basti: any group of *jhuggies* which the Board may, by notification, declare as a *jhuggi jhopri basti* in accordance with the following factors, namely:

- (i) the group of *jhuggies* is unfit for human habitation;
- (ii) It is detrimental to safety, health or hygiene, by reason of dilapidation, overcrowding, faulty arrangement and design of such *jhuggies*, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors;
- (iii) It is inhabited at least by fifty households as existing on 31st March, 2002.
'Occupier' is:
 - (i) Any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;
 - (ii) An owner in occupation of, or otherwise using his land or building;
 - (iii) A rent-free tenant of any land or building;
 - (iv) A licensee in occupation of any land or building;

- 1) The power to make a survey of any *jhuggi jhopri basti*;
- 2) The power to prepare a scheme for the removal of any *jhuggi jhopri basti* and for resettlement of the residents thereof;
 - i) The consent of the residents of the *jhuggi jhompri basti* shall not be required for the preparation or implementation of such a scheme;
 - ii) Every such scheme shall specify the amount to be paid by the land owner and by the persons to be resettled towards the cost of new houses to be allotted to them and also the criteria for eligibility for resettlement;
 - iii) It shall be the duty of the local authority having jurisdiction and of the police and of any other agency or department whose assistance the Board may require to co-operate with and render all reasonable assistance to the Board;
- 3) Prepare a scheme for the improvement of any *jhuggi jhopri basti*;
 - i) A scheme prepared under such provision may include provision for payment or for contribution of labor by the residents of the *jhuggi jhopri basti* individually or collectively;
 - ii) The Board may, with the consent of the owner of the land on which the *jhuggi jhopri basti* is situated, work out schemes for collective community rehabilitation, relocation or in-situ up-gradation and involve private sector/slum cooperatives for redevelopment of the *basti*;
 - iii) The consent of the residents of the *jhuggi jhopri basti* shall not be required for the preparation and implementation of any scheme for redevelopment of the *basti* under this section.

In sum, the most important overarching function of DUSIB is to play the role of “nodal agency” for any relocation/resettlement program for land owned by the

(v) Any person who is liable to pay to the owner damages for the use and occupation of any land or building;

MCD or by the Government of Delhi. This includes, but it is not limited to: carrying out surveys and biometric identifications of Slum dwellers; carrying out the allotment of flats; canceling allotments of flats in case of violation of the stipulated terms and conditions by the allottee; managing the accounts which concentrate the financial contributions to the program. In the case of land owned by Central Government agencies (such as the DDA, Railways, the Land and Development Office), such agencies are free to carry out the program by themselves, but they can still use DUSIB as the “nodal agency.”

At present, DUSIB is said to follow a three-pronged strategy in slum clearances/rehabilitation programs.⁸¹

Originally, DUSIB had two cut-off dates determining eligibility for resettlement programs. *Jhuggi jhopri* (JJ) dwellers who had been residing before 31st January, 1990 on a piece of land which is *urgently* required by the Land owning agencies for the execution of public purpose projects were allocated to plots of size 18 sq. meters. Those who had been residing on a piece of land urgently required by the Land owning agencies for the execution of public purpose projects after 31st January, 1990, but before December, 1998 were provided plots of size 12.5 sq. mtrs.⁸² Crucially, the Government of the NCTD (GNCTD) approved new eligibility guidelines in February 2013,⁸³ and a singular cut-off date of June 4, 2009 was issued. Specifically, the guidelines state that to “become eligible for allotment” the JJ dweller “should have been occupying the Jhuggi on or before 4.6.2009.”⁸⁴

Second, in-situ up-gradation of the slum clusters is resorted to where the Land Owning Agencies do not need the land in near future.

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□ See Delhi Urban Shelter Improvement Board, http://delhishelterboard.in/main/?page_id=128.

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□ The Delhi Master Plan 2021 provides (*see infra* p. 21) a different, and significantly more expansive, three-pronged approach.

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□ Gov’t of Nat’l Capital Territory of Delhi, Dept. of Urban Dev., No.F.18(7)/UD/DUSIB/2011/Vol-12350 (Feb. 25, 2013).

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Id. at ¶ 4(ii).

Third, civic amenities are provided in the JJ clusters which do not fall in the two categories above.

According to the Guidelines approved by the GNCTD in February 2013,⁸⁵ which regulate DUSIB's functions when it acts as a "nodal agency," DUSIB is required to:

- 1) conduct surveys of the *jhuggie jhoprie bastis* (identified per article 2.g. of the DUSIB Act 2010, see *supra* Part. II, section C);
- 2) give at least four weeks notice, prior to conducting such surveys;
- 3) assure that any eligible JJ cluster dweller is counted in such surveys, by affording to anyone an opportunity to contest their exclusion;

Such Guidelines further specify the list of documents that any dweller can use to prove her eligibility. These include, among others, the Voter ID, driving license, and the Aadhar card.

Note however, that such Guidelines apply to DUSIB only; that is, the other land owning agencies carrying out rehabilitation or relocation procedures are not required to follow them, nor are they required to use DUSIB as the "nodal agency." Also, the Guidelines explicitly specify (art. 4.iii.) that the JJ dweller cannot claim the allotment of a flat as a matter of right. The lack of a right-based approach to the allotment of flats is reflected in the fact that the Guidelines do not specify any concrete institutional avenue for challenging or contesting the exclusion from the list of the eligible dwellers. Finally, art. 20 of the Guidelines seem to limit the latter's applicability to a specific list of JJ clusters. The article is ill-formulated, however, and seems well suited to invite much uncertainty in its application.

Another important function performed by DUSIB concerns the management of night shelters. According to the DUSIB's official website⁸⁶ (which is adjourned only until the winters 2011-2012), DUSIB manages 64 night shelters as well as 84 temporary ones. However, DUSIB presents no data regarding the actual conditions of

85 □ *Id.*

86 □ *See supra* text accompanying note 82.

such shelters and the level of “satisfaction” experienced by their users. This is reflected, for example, by the extent to which people prefer rough sleeping even when they are offered a place in a shelter.

Moreover, DUSIB declares its interest and support for public awareness campaigns, such as providing blankets and other necessary items to rough sleepers, as well as for coordinating efforts with other authorities and public institutions, like the Delhi Police, directed at improving the lives of the homeless. The effectiveness of these efforts should deserve close scrutiny since it touches upon very critical issues concerning the protection of the basic rights of the homeless.

PART III

POLICY INITIATIVES

This Part of the Memorandum provides an analysis of a number of housing policies, recently enacted within the NCTD, or India more generally: 1) the Delhi Master Plan 2021; 2) Jawaharlal Nehru National Urban Renewal Mission; 3) Rajiv Awas Yojana; 4) The National Housing Rights Bill 1992 (which is only a proposal for fresh legislation). Each policy is outlined according to a) its political and legislative objectives, and b) the effectiveness of its implementation so far.

1) Delhi Master Plan “2021”

A. Political and Legislative Origins and Main Objectives:

The Delhi Master Plan “2021” is a legislative act, formulated by the DDA under the supervision and subject to the approval of the Ministry of Urban Development and Poverty Alleviation. It aims is to “make Delhi a global metropolis and a world-class city, where all the people would be engaged in productive work with a better quality of life, living in a sustainable environment.”

One of the most visible “planning” failures of the previous plans, and one which that the Delhi Master Plan 2021 is meant to address, was the significant miscalculations in the official estimates of population expansion in Delhi's urban areas. These miscalculations resulted in the “mushroom” proliferation of slums throughout the Delhi territory.

The Delhi Master Plan 2021 proposes to address the problems connected with “Slum proliferation” by:

- 1) Favoring a substantial involvement of the private sector in “land assembly and development;” and
- 2) Redevelopment and densification of the existing urban areas.

More generally, the “Plan” identifies a number of critical areas for policy intervention, including:

- 1) *Public Participation and Plan Implementation*: Decentralized local area planning by participatory approach; Performance oriented planning and development, with focus on implementation and monitoring.
- 2) *Shelter and Housing for the poor*: Shift from plotted housing to group housing for optimal utilization of land; Private sector participation for development / redevelopment of housing; in-situ slum rehabilitation, including using land as a resource for private sector participation;
- 3) *Unauthorized Colonies*: to be regularized as per government policy, and effectively incorporated in the mainstream of urban development. This requires provision of infrastructure development, services and facilities for which differential norms and procedures have been devised.
- 4) *Informal Sector*: Earmarking of “Hawking” and “No Hawking” Zones at neighborhood and cluster levels;

More specifically, and with regards to the policy governing the resettlement of “Slum and JJ Clusters,”⁸⁷ the “Plan” delineates a three-pronged approach (par. 4.2.3.1, p. 37), based on 1) relocation from areas required for public purpose; 2) in situ up-gradation at other sites; 3) environmental up-gradation to minimum standards as an interim measure.

The Plan then lists a number of essential components, which shall concretely constitute such three-pronged approach. These include:

- 1) Resettlement, whether in the form of in-situ up-gradation or relocation, should be based mainly on built up accommodation of around 25 sq. m with common areas and facilities, rather than on the model of horizontal plotted development.
- 2) A cooperative resettlement model with adequate safeguards may be adopted with tenure rights being provided through the institution of Co-operative Societies.

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[□] See also Part I. p. 10 of this memo (for more on resettlement policies as developed by the Delhi Master Plan 2021, commenting on *Sudama Singh and Others v. Government of Delhi and Anr*).

- 3) The provision of accommodation should be based on cost with suitable arrangements for funding / financing, keeping in view the aspect of affordability and capacity to pay.
- 4) In cases of relocation, the sites should be identified with a view to develop relatively small clusters in a manner that they can be integrated with the overall planned development of the area, particularly keeping in view the availability of employment avenues in the vicinity. Very large resettlement sites could lead to a phenomenon of planned slums.
- 5) Arrangement for temporary transit accommodation for families to be rehabilitated should be made. This may preferably be near or at the same site and the utilization of these may be synchronized with the phases of implementation of the scheme of in-situ up-gradation.
- 6) Involvement of Community Based Organizations (CBOs) and Non-Governmental Organizations (NGOs) in the resettlement process.

In presenting the “Plan,” the DDA claims to having followed a participatory approach, exposing the initial drafts of the “Plan” to the criticism of a variety of different constituencies. The actual formulation of the “Plan,” however, saw the participation of mainly national or state bureaucracies, rather than the citizenry at large. The “Plan” documents more than 7,000 objections/suggestions, with more than 600 personal hearings with individuals and associations. Such public inputs were gathered by a “Board of Inquiry” and then transmitted to the DDA and the Ministry of Urban Development, for final approval. It may be fruitful to examine the perceived effectiveness, among local communities, of the participatory procedure followed by the DDA in elaborating its “Plan.”

The “Plan” identifies 10 Review Groups tasked with monitoring progress on these indicators and enhancing participatory engagement. Among the ten, the following seem the most important for our research:

- 1) *High level group for sub-regional plan for Delhi*: This group is tasked with developing a sub-regional plan, in coordination with the Government of the Capital Territory of Delhi;

- 2) *Local Level Participatory Planning Group*: This group is directed toward defining local areas and working out systems and procedures, so that the local governments can take up the preparation of local level plans by participatory process;
- 3) *Slum Rehabilitation and Social Housing Group*: This group aims to develop policies and physical and financial strategies for slum rehabilitation with “the objective to make Delhi slum free in a time frame;”
- 4) *Legal Framework Review Group*: This group is tasked with reviewing the following regulations: 1) Land Assembly and Public Sector Participation in Housing and Land Development; 2) Regularization and up-gradation of unauthorized colonies; 3) Local Level Planning Organization

B. Effectiveness of Implementation: Lessons and Challenges

The Delhi Master Plan 2021’s basic aim is to “make Delhi a global metropolis and a world-class city.” The “world-class city” rhetoric is indeed a very common one, and certainly not peculiar to Delhi’s governance.⁸⁸ But it is a very dangerous one as well.

For one thing, and very generally, it seeks political support and legitimation by severely misplacing the focus of political and social concerns: from one centered on people’s well-being, and the possible role played by their “spatial” environment and security in fostering it, to the glorification of such “spaces” themselves, thus excluding any direct connection with the needs of the people living in them.

Second, and more concretely, the realization of a “world-class” city may require the enactment of broad and very ambitious slum-clearance policies. In recent years, slum clearances have often been conducted together with resettlement programs. And yet, the record for these, when motivated by the “world class city” rhetoric, is not very encouraging. For example, some (conservative) estimates point out that only half of the families evicted between 1990 and 2007 were actually resettled.⁸⁹ Others have calculated that in the same time period almost a million

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□ Véronique Dupont, *The Dream of Delhi as a Global City*, 35(3) INT’L JOURNAL OF URBAN AND REGIONAL RESEARCH, 533 (2011).

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slum-dwellers have been displaced. However, only 325,000 people have been relocated during the same time period, according to official statistics. Furthermore, many resettlement programs typically do not offer re-housing, but the mere allotment of a plot, at times far away from the original establishment, thus increasing the financial burdens on the displaced dwellers. Many of them, in fact, seem to end up illegally re-selling the allotted land, in order to secure immediate monetary gains: many prefer squatting next to their original establishments (especially if situated in central areas), then their newly assigned plot of land.⁹⁰ In sum, relocation presents one with a tragic choice between securing income or land. The “Plan,” however, does not make much room, in its three-pronged approach to resettlement policies, for such considerations.

Third, the “world-class” city rhetoric seems to be strictly connected with, and even lend support and legitimization to, the criminalization and further social exclusion of the homeless, as the most *visible* obstacle to the imaginary “beautified” global city (on the dangers of such “rhetoric” see *infra* part IV(3)(e)).⁹¹

In this matter, the Delhi Master Plan 2021 made the remarkable legislative commitment to create at least one night shelter for homeless people per 100.000 inhabitants.⁹² For a population of 20,000,000, realizing such ratio would determine the significant achievement of 200 night shelters.

Finally, the “Delhi Master Plan” made a significant commitment to strengthen and empower participation processes. One of the pre-conditions for rendering such

⁹⁰ See Véronique Dupont, *Which Place for the Homeless in Delhi*, 8 S. ASIA MULTI-DISCIPLINARY ACADEMIC JOURNAL 4 (2013).

⁹⁰ [□] *Id.*

⁹¹ [□] See Usha Ramanathan, *Ostensible Poverty, Beggary and the Law*, ECONOMIC AND POLITICAL WEEKLY 33 (2008); Usha Ramanathan, *Illegality and the Urban Poor*, ECONOMIC AND POLITICAL WEEKLY 3193 (2006); Dupont, *supra* note 88; Dupont, *supra* note 89, at 6; HABITAT AND LAND RIGHTS NETWORK, THE HUMAN RIGHTS TO ADEQUATE HOUSING AND LAND IN INDIA: REPORT SUBMITTED TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 10 (2008); INDO GLOBAL SOCIAL SERVICE SOCIETY, THE UNSUNG CITY MAKERS, A STUDY OF THE HOMELESS RESIDENTS IN DELHI 96-97 (2012).

⁹² [□] See Delhi Master Plan, § 4.3

processes effective and consequential is to provide homeless or otherwise socially excluded people, with identity cards, legal identity and residence proof, since lack of these instruments bars them from, for example, enrolling in pension schemes or accessing fair price shops, as well as, most directly, from exercising their voting rights. The major national initiative on this issue (The National Population Register and Unique Identification Number - UID) has led to important improvements (to say the least, by making the question of the homeless and the poor's visibility within the formal system a matter for public debate⁹³), but it has also faced much criticism within the NGOs' community. For example, some have argued that "the UID project raises crucial issues relating to profiling, tracking and surveillance, and may well facilitate a dramatic change in the relationship between the State and the people."⁹⁴

2) Jawaharlal Nehru National Urban Renewal Mission (JNNURM)

A. Political and Legislative Origins and Main Objectives:

The JNNURM is a nation-wide effort, led by the Government of India. It aims to:

- i) Improve and augment the economic and social infrastructure of cities;
- ii) Ensuring basic services to the urban poor including security of tenure at affordable prices;
- iii) Initiate wide-ranging urban sector reforms whose primary aim is to eliminate legal, institutional and financial constraints that have impeded management of, and investment in, urban infrastructure and services;

The JNNURM was supposed to facilitate and encourage a broad and ambitious reform process, led by local actors, but supervised by the Central Government.

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□ See, e.g., <http://www.thehindu.com/news/cities/Delhi/6000-homeless-persons-get-voterid-cards-in-delhi/article4118803.ece>.

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□ Usha Ramanathan, *A Unique Identity Bill*, in *ECONOMIC AND POLITICAL WEEKLY*, 2011, at 10.

The JNNURM called for the development of city-wide plans that could, first, detect institutional and organizational areas that required intervention and, second, proceed efficiently to adequate reform initiatives.

As a result, in 2006, the Department of Urban Development of the Delhi Government produced a “City Development Plan” (CDP), which was based on an assessment of the existing situation, and outline[d] a vision for development.

The CDP contained a number of interesting suggestions and inspiring ambitions for reform.

A number of suggestions made by the CDP deserve attention and scrutiny. In particular, the CDP 2006 called for:

- i) The creation of a political and administrative nodal agency, which could provide effective governance to the NCTD;
- ii) The clarification of jurisdiction of various agencies that come into contact with the people and are entrusted with various responsibilities;
- iii) Streamlining structure and role of State and City level elected representatives;
- iv) Rationalization of Planning Boundaries;
- v) Incorporation of the DDA, within the MCD;
- vi) The creation of a Slum Housing Corporation (SHC).

B. Effectiveness of Implementation: Lessons and Challenges

JNNURM is a nation-wide policy effort; thus, its differential impacts in different regions within the Indian territory could be used to assess the extent to which peculiarities within Delhi’s administration helped, or hindered, the actual realization of its goals and purposes.

As a general matter, the *Housing and Land Rights Network (HLRN)* has argued in a 2008 report that notwithstanding its ambitious and inclusive goals, evictions of slum-dwellers have actually increased after the enactment of JNNURM.⁹⁵

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In part, the Report attributes much of the fault to the “anti-poor” prerequisites, like the annulment of the Urban Land Ceiling and Regulation Act 1976, imposed on the states, in order to have access to the funds provided by the Central Government with JNNURM (Delhi has, in fact, repealed the Urban Land Ceiling Act).

In a nutshell, the Urban Land Act 1976 provided a “ceiling” on vacant land agglomerations and thus favored the occupation of land by slum-dwellers. The Government of India, in turns, argued that the repeal of the Act would free a large portion of urban land for housing, and economic development more generally. The Report argues, however, that the Act allowed States to give dwellers voting rights and ration cards, and thus a legal recognition for their housing rights. Consequently, with the annulment of the Act, all such rights have been systematically negated.

Within the more specific Delhi context, many have contested the calculations contained in the City Development Plan 2006 (which is the document produced by the Department of Urban Development of the Government of Delhi, in application of the JNNRUM initiative), which purports to demonstrate, through a cost/benefit analysis, the economic and social advantages of slum demolition and resettlement (as opposed to in site up-gradation).⁹⁶ In particular, the City managers often overestimate the following benefits (deriving from demolition and resettlement): 1) land value of evacuated site for commercial/developmental use; 2) revenue flows in terms of taxes and charges; 3) new employment opportunities from the development projects in the evacuated sites.

Conversely, such analysis tends to underestimate a number of less visible costs, such as 1) the costs of procurement of land for relocation; 2) the costs of civic amenities in the sites for relocation; 3) the costs for the relocated households (such as income loss, transportation costs and so on).

□ HOUSING AND LAND RIGHTS NETWORK, *THE HUMAN RIGHTS TO ADEQUATE HOUSING AND LAND IN INDIA: REPORT SUBMITTED TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS* 10 (2008).

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□ Véronique Dupont, *Slum Demolition in Delhi since the 1990s: An Appraisal*, *ECONOMIC AND POLITICAL WEEKLY* 82 (2008).

Furthermore, some have noted that the City managers' calculations fail to take into appropriate consideration the significant contribution of the poor to the informal economy, the corresponding loss of income sources deriving from relocation, as well as the increased vulnerabilities and uncertainties connected with the relocation itself.

Finally, one of the most visible commitment (and, correspondingly, one of the most visible institutional failures, both past and present⁹⁷) made by the City Development Plan 2006 was to “streamline,” “rationalize” and, in sum, better coordinate, the activities of the different institutions and agencies, operating within the Delhi Territory.⁹⁸

So far, little has been achieved, however. The events on Pusa Road, on 22nd December 2009 are a good example (as well as a very troubling one) of the persistence of such lack of coordination.⁹⁹ After displacement from their *jhuggies* in Rajendar Nagar, due the construction of a metro line in 2000, a group of families established a camp on an open space in Pusa Road. After having being expelled even from there in June 2009, the following winter the Delhi Government provided them with temporary tents. And yet, the MCD, ignoring the Government's (temporary) initiative, destroyed their tents, forcibly evicted families living there, and seized their belongings.

3) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARR)

A. Political and Legislative Origins and Main Objectives

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□ The point has been forcefully stressed by the Committee on Social, Economic and Cultural Rights, in its Concluding Observations in 2008. See <http://www.humanrights.asia/news/alrc-news/ALRC-FST-001-2008> at sections 30 and 70.

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□ See, e.g., the following interview by the Minister for Urban Development, http://articles.economictimes.indiatimes.com/2009-04-27/news/27656425_1_transport-jnnurm-mission-cities

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□ Dupont, *supra* at note, at 8.

LARR is a bill that was first passed by the Lok Sabha in September 2011, then by the Rayja Sabha in September 2013, receiving the assent of the President of India in the same month and finally coming into force in January 2014. At base, the Bill replaces the Land of Acquisition Act 1894 (LAA), which was the law that, until earlier this year, governed the way in which the Government acquired private land for public purposes.

Quite apart from its rather “dated” origins, one of the biggest concerns regarding the LAA of 1894 was that it did not contain (and, indeed, “de facto” prevented altogether) a *statutory* footing for Resettlement and Rehabilitation Policies, following the acquisition of private land by the Government.

The major highlights of the LARR can be recapitulated as follows:

- 1) A rather broad scope of application, as the Bill applies when:
 - i) The acquisition of land by the Government acquires holds and controls land for the latter’s own use;
 - ii) The acquisition of land is carried out with the ultimate purpose to transfer it for the use of private companies for stated public purpose;
 - iii) The acquisition of land is carried out for immediate and declared use by private companies for public purpose

- 2) A specific definition of public purpose; which includes:
 - i) Purposes relating to national security or defense, safety of the people;
 - ii) Acquisition of land for ports, railways, highways, power and irrigation purposes for use by government or by public sector companies (that is, government controlled corporations);
 - iii) Land acquisition for planned development or improvement of village or urban sites or for residential purpose to weaker sections of society in rural or urban areas;

- iv) Land acquisition for government administered agricultural, educational, health and research schemes or institutions;
- v) Land acquisition for persons residing in areas affected by natural calamities;
- vi) Land acquisition for resettlement of affected people for any of the above government projects;
- vii) Land acquisition by the Government for public-private-partnership projects for the production of public goods or the provision of public services;

Crucially:

- viii) When the land is not used in the five years following the acquisition, it should be given back to the original land owners;
- ix) Consent is not required if the Government acquires the land for a specified public purpose and controls it directly. However, consent of the 80% of the affected parties is required in any other case

3) Detailed provisions requiring schemes of compensation and resettlement (including compensation above market value, entitlements to a job, annual payments, share of the appreciated value of the piece of land acquired) which should count as minimum thresholds (each state can determine to set its own policy, granting a higher threshold), and that are applicable even to private transactions with no government intervention.

4) Rajiv Awas Yojana (RAY)

A. Political and Legislative Origins and Main Objectives:

RAY is an initiative led by the Ministry of Housing and Urban Poverty Alleviation, under the Central Government of Delhi. Its basic mission is to bring all existing slums within the formal system, thus enabling them to take advantage of the basic amenities of city development. The initiative also aims to redress the failures of the formal system that lead to the creation of slums in the first place.

More specifically, the objectives of the Ray initiative (2013-2021) are:

1. Improving provisioning of housing, basic civic infrastructure and social amenities in intervened slums.
2. Enabling reforms to address some of the causes leading to creation of slums.
3. Facilitating a supportive environment for expanding institutional credit linkages for the urban poor.
4. Institutionalizing mechanisms for prevention of slums including creation of affordable housing stock.
5. Strengthening institutional and human resource capacities at the Municipal, City and State levels through comprehensive capacity building and strengthening of resource networks.
6. Empowering community by ensuring their participation at every stage of decision-making, through strengthening and nurturing Slum Dwellers' Association/Federations.

To date, RAY has produced a series of documents detailing specific guidelines meant to govern how state and central government agencies engage local communities and advise local communities on how they can take advantage of the full benefits of the formal system, primarily through social mobilization.

5) The National Housing Rights Bill 1992

The Housing Rights Bill 1992 is a proposal for legislation formulated by The National Campaign for Housing Rights (NCHR), an independent coalition of organizations and individuals from several States in India.¹⁰⁰ The NCHR campaigned, in particular, for: (a) the right to housing to be declared as a Fundamental Right, (b) a comprehensive Peoples' Bill of Housing Rights.

In formulating the Housing Rights Bill 1992 the NCHR followed a thorough and systematic procedure of consultation and discussion: according to the NCHR “the

¹⁰⁰ Defunct in the early '90s, leaving space to various state-level initiatives across the country, the Campaign was formally re-constituted in 2012 with the name of National Forum for Housing Rights.

very process of drafting the Bill is as important as the substantive part of the Bill itself.”

In particular, the final draft of the Bill was preceded by four Drafts Approach Paper, each of which was discussed and revised in consultation with a wide variety of organizations campaigning for housing rights in India.

The proposed Bill contains at least five important features.

First, the Bill contains a proposal for a constitutional amendment, recognizing a constitutional right to housing. Such right would include, in particular: The right to reside in security and dignity; The right of equal access to any public service system or public distribution system; The right to live in healthy, hygienic and safe living environment; The right to information pertaining to adequate housing.

Second, the Bill provides a detailed specification of the “right to reside” and “right to resettle.” In particular, the Bill provides a complex definition of “a family inadequately housed” (art. 4.1), and prescribes that such family cannot be evicted “notwithstanding any other law for the time being in force.” Also, at art. 4.5 and 4.6, the Bill provides specific procedural guarantees against any acquisition of land by the Government: “Notwithstanding the provisions of the Land Acquisition Act, or any other Act conferring the right to acquisition for public purposes in force in the territory of India, any opinion to be formed by the appropriate Government shall be only after giving the public an opportunity of being heard and in consultation with the Dwellers Union of the areas from which such eviction or dispossession is sought.”

Third, the Bill imposes on the Government very demanding duties, including the duty to provide surplus land to the Dwellers Unions (see *infra*) “for the purpose of implementing the provisions of the Act” (art. 11.1), as well as funds, building materials, equal access to the public distribution system like water, electricity, civil supplies and public service systems like drainage, sanitation, health services, communication and public transport, educational facilities and child care services and playgrounds.

Fourth, the Bill creates so called “Dwellers’ unions,” which would play, in the intention of the drafters, a fundamental role in the construction, delivery, administration and protection of housing facilities. In particular, such unions (which

are administratively created for any ward in urban areas, and every panchayat in rural areas, and whose members are the dwellers themselves) would maintain a register of the dwellers within every ward/panchayat, collect data for the availability of resources for dwelling, ask the Government for resettling any group of dwellers, hold land in trust for the benefit of the dwellers, interact with local or central branches of the Government and, finally, ensure adequate housing for all the dwellers living in the ward/panchayat.

Finally, the Bill proposes a number of amendments to the then existing national legislation.

In its current formulation, the proposed Bill faces a number of difficulties, along at least three different dimensions: first, with reference to the scope of the reforms invoked; second, with reference to its actual responsiveness to the existing problems of housing delivery and administration; third, with reference to its actual efficacy in providing the legal means to achieve its stated goals.

Due to the Bill's inapplicability to the current socioeconomic and political scenario, and the fact that the civil society movement that advocated for adoption of the Bill has undergone significant change, a discussion around a new draft Bill is taking place within the National Forum for Housing Rights.

PART V

RESULTS OF RESEARCH TRIP ON HOUSING LAW AND POLICY IN NEW DELHI, MARCH 2014

1) Rehabilitation and Resettlement

In Delhi, only 25% of the population (roughly 33.08 lakhs) reside in planned colonies. The remaining 75% of the population lives in unplanned colonies, which include JJ clusters, slum areas, and resettlement colonies. These unplanned colonies lie mostly on public land, without the authorization of the land owning agency. In order to give effect to the Master Plan of Delhi, the government created a development policy for JJs, focusing on three different methods: relocation, in-situ rehabilitation, and in-situ upgradation.

Relocation, as the name suggests, involves relocating JJ dwellers to a settlement in a different location than their current settlement. In a relocation, the Government evicts and demolishes the current settlement area and provides the dwellers with alternative accommodations. In-situ rehabilitation involves a temporary eviction from the current settlement. During this period, the dwellers are provided temporary accommodations while the settlement site is demolished and rehabilitated. The Kathputli colony discussed in the Appendix is a good example of the Government's attempt to complete an in-situ rehabilitation. Further projects by DUSIB involving in-situ rehabilitation include Sultan Puri, Hari Naga Ashram, Kalyan Puri, and Sunder Nagar. The last method the Government utilizes is in-situ upgradation. This involves upgrading the colony without an eviction. For example, while the dwellers continue to live in their settlements, the government may pave walkways or roads, or provide access to water.

As discussed in Part II(3)(c) above, the GNCTD released Guidelines in 2013 pertaining to relocation and rehabilitation.¹⁰¹ These guidelines entrust DUSIB as the “nodal agency” for the process of eviction, rehabilitation, and resettlement. First, DUSIB determines who is eligible for rehabilitation or resettlement through a survey process. During the survey, DUSIB enters the JJ clusters to establish which residents are eligible for rehabilitation and which are not. To be eligible, a resident must have been residing on the land before a cut-off date. Currently, the cut-off date is June 4, 2009. The cut-off date was established in order to ensure migrants do not enter the settlements at the last moment, hoping to reap the benefits of rehabilitation. However, some question the effectiveness and fairness of using cut-off dates to exclude community members from rehabilitation. To verify residency, a dweller may use any one of 13 different documents listed in the Guidelines. Second, DUSIB must give proper notice prior to an eviction in order to protect community members’ right to due process. As discussed below, a principal difficulty in administering rehabilitation and resettlement plans lies in the problems arising out of incomplete surveys and improper notice.

2) Problems Witnessed

A. Lack of notice of demolitions

One of the most pressing challenges witnessed in the slum communities in Delhi was the lack of notice provided before government demolitions. For many communities, including Baljeet Nagar, bulldozers suddenly arrived one day and began demolishing homes and structures that had been standing for decades. Families present in the slums at the time of a demolition often do not have enough time to remove all of their belongings before their homes are demolished. Families that are absent at the time of a demolition may have all of their possessions destroyed.

During our interviews with government officials at DUSIB and the DDA, agency officials declared that affected communities were always given notice before demolitions were carried out. However, when we spoke with a particular community that the Government claimed had been given notice prior to a demolition, we heard a

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□ Gov’t of Nat’l Capital Territory of Delhi, *supra* note 84.

different account of what had happened. Despite government claims, many slum-dwellers told us that they woke up one morning to the sounds of bulldozers destroying their homes, without any idea that their community was scheduled to be demolished. Community members also lamented the fact that the Government resorted to deceit in order to accomplish the demolitions. For example, the night before the demolition in Baljeet Nagar, three hundred police officers arrived. When the slum-dwellers asked why so many police officers were present, the police said they were there because a high-ranking political figure was going to speak in the following days. However, this was actually a ruse to prevent alarm due to the police presence and to get people out of their homes so they could be demolished.

It is troubling that there is no statutorily or judicially dictated amount of time prior to which the Government must provide notice before a demolition. This is a major concern for communities residing on government owned land subject to demolition. A clear rule stating that the Government must provide notice at a reasonable time prior to beginning a demolition would alleviate some of the problems facing these communities. The form of notice must also be carefully considered. While the Government might walk through a community and drop flyers stating that a demolition will occur on a designated date, if many in the community are unable to read, the flyers will not provide actual notice.

B. Inadequate survey process

The success of any development project, whether it involves the relocation of a significant number of people or merely the rehabilitation of housing conditions, crucially depends on the effective and adequate use of surveying techniques of the affected population. However, the survey practices of land-owning agencies in Delhi prior to the rehabilitation of slums often fall short of desired standards.

First, there are no standard, legally enforceable procedures common to all agencies in place for surveying affected population prior to demolition and rehabilitation. Instead, land-owning agencies follow their own rules, which appear to be developed on an *ad-hoc* basis, and are rarely applied consistently throughout the development process. We asked each government official we met in Delhi (within the DDA, as well as DUSIB) to see their surveying procedures but were not provided with the appropriate documents. The survey Guidelines promulgated by the GNCTD

in 2013 (discussed above in Part II (3)(c)) provide a baseline from which to develop universal, legally enforceable survey procedures. However, currently these Guidelines only apply to DUSIB; the DDA and other land-owning agencies are not required to use them.

Second, there are presumably strong incentives for agencies involved in development projects to conduct less than adequate surveys of affected populations in order to lower costs. Such incentives are even stronger when the agency involved in re-developing the land is different from the agency involved in the relocation process. Without a common, authoritatively determined and easily enforceable policy framework, the overlapping responsibilities of land-owning agencies operating in Delhi are likely to exacerbate these difficulties. Moreover, without accurate information gathered before the implementation of the development project, the Government has no way of telling whether the development plan has achieved its desired outcomes.

Finally, notwithstanding the powers given to DUSIB under art. 9.1 of the DUSIB Act 2010, land owning agencies seem to be working on a very narrow conception of the information required to be gathered through surveys. Such information should include not only the information needed for the proper identification of the eligible portion of the affected population, but also all that is necessary to document the quality of life of the population. It is only by reliably acquiring such a richer view of the affected population that the agency can reach an informed and intelligent decision regarding what the public interest actually requires in the case at hand. At present, such information is typically gathered by independent NGOs, with great difficulties and only after the redevelopment project has begun. Moreover, an adequate survey of the affected population requires a correct estimation of the costs of the development project and, consequently, a fair estimation of the overall benefits of its completion, both for the public purse itself, as well as in terms of its effects for the general population.

In sum, no public development project can be successful without an accurate knowledge of the number of people requiring relocation or rehabilitation, their living conditions, as well as social and economic possibilities. Adequate surveys before the implementation of a development project are a necessary condition (albeit not a

sufficient one) for the effective discussion, definition and justification of the public interest to be realized through the project.

C. Distant resettlement

DUSIB and the DDA vigorously defend their development plans on the grounds that the Government is providing subsidized housing to the slum-dwellers they displace. However, the principal problem with resettlement colonies is that they are often located on the outskirts of the city, far from available jobs and livelihood. During our field research, we discovered that many families were forced to spend more money to commute back and forth from their jobs and the resettlement colony than what they make in a day. Moreover, some of the resettlement communities, such as Baprola, Bawana, lack critical infrastructure, such as schools, hospitals and religious centers.

Housing activists in Delhi are also increasingly concerned that distant resettlement destroys the family unit. Mothers that work in the city are forced to spend much more time away from their children due to the long commute. In addition, because the resettlement is far from employment opportunities, men are more likely to be unemployed and may spend the day drinking and gambling. Due to the distance and inadequate infrastructure, families often decide that it is in their best interest to sell their flats in the resettlement communities and move back to slums within the city. The crucial component in this decision is whether it is possible to earn a livelihood. Simply building more housing structures is an insufficient method of combating inadequate housing. Families will live where they can have a livelihood, and distant resettlement often makes this impossible in the new location or cost-prohibitive from the standpoint of commuting to and from the new settlement.

D. Lack of community participation

Community members often have no voice in the development plans that directly affect their lives. For example, leaders in the Kathputli Colony have repeatedly expressed frustration over the fact that they were not consulted early enough and in a meaningful fashion regarding the Government's development plans of the land they currently occupy. Their lack of transparency and participation in the planning process has created distrust between the community and the Government. In situations such as

these, the community may not trust the Government regardless of whether the development plan is ultimately in their interest.

E. Slum-dwellers are characterized as “squatters” and “criminals”

During our trip, we found that the rhetoric surrounding the “problem” of slums and homelessness used by many of the public officials is deeply flawed. Many public officials view slum-dwellers as merely “encroachers” on public grounds. They therefore view rehabilitation efforts as directed toward restoring “legality” and fighting “criminality” in these areas. The use of such rhetoric serves a number of different purposes and has undesirable implications.

First, the language that depicts slum-dwellers and homeless people as “criminals” or “free-riders” on public resources typically obscures the significant social and economic contributions these citizens make to the city. Many of them, we found, work low paid jobs, without which the city’s economy would be significantly weakened. Moreover, such language typically omits to consider the forces that push these citizens outside of the formal housing market, including their inability to afford accommodation other than the *jhuggies* in which live.

Second, the rhetoric of fighting “criminality” and restoring “legality” is unhelpful in understanding the true nature of the problem of slums or homelessness, since it does nothing to point to acceptable solutions. For instance, economic opportunities in Delhi will always attract migrants from rural areas, regardless of how many of them are then relocated back to the outskirts of the city during relocation. The prevailing rhetoric fails to account for this social and economic reality.

Third, such rhetoric seems to serve the deeply questionable purpose of distinguishing slum-dwellers along two lines: the “helpless poor” (who would accept whatever is being proposed by public authorities) and the militant “slum lords” (who will not accept any Government proposed plan, because they would lose their so-called privileges). The social structure of slums is certainly a complex issue and one that deserves much closer scrutiny and more serious attention. However, the prevailing language used in this manner to conveniently distinguish between different parts of these underprivileged communities is unhelpful in revealing their heterogeneous nature. This distinction further allows public officials to blame

community opposition to redevelopment plans on the “slum lords” rather than taking seriously the views of the community. This perspective was voiced during a meeting with a high-ranking DDA officials.

F. Law Enforcement

Along with ensuring law and order the police should play the role of protecting vulnerable communities against abuses during the rehabilitation process. However, during our trip we learned that law enforcement authorities are often used as a tool by government agencies to implement development schemes without concern for the needs of affected communities. Even worse, law enforcement officers have taken advantage of slum dwellers' lack of legal protection and use force to extort money.

For example, in the Baljeet Nagar colony, community members described a practice in which police officers demand bribes of several thousand rupees to allow slum-dwellers to install new doors, windows, or roofs. In addition, we heard stories of police brutality in the settlements, especially when residents refuse to offer bribes. We also learned that this problem is not unique to the settlements. Homeless populations also suffer from police brutality. In fact, one housing activist stated that it is the foremost problem facing the homeless in Delhi today. This activist had not only heard stories of brutality; he also witnessed it firsthand during a “night out” program he participated in.

As mentioned above, we also encountered stories about the use of deceptive practices by the police. In Kathputli colony, at the time of our trip the police were stationed outside of the colony trying to induce residents to accept the offer of in-situ rehabilitation, despite unfavorable terms. They showed misleading videos on a large screen with inaccurate depictions of the resettlement colony. At Baljeet Nagar, the police were used as a distraction when bulldozers arrived and began to demolish the colony.

G. Lack of communication in the local language

Another issue confronting slum-dwellers is the lack of official communications in local languages. All court proceedings, for example, are conducted in English, despite a majority of dwellers not being able to speak the language. In some instances, legal documents are presented to communities in a language residents could not read. This

serves to disenfranchise community members and limit their meaningful participation in the rehabilitation process. In some instances, it may constitute intentional deception. The lack of proper communication also perpetuates a lack of trust between the community and the Government.

In Kathputli colony, legal contracts offered to community members were in English, a language most residents in the colony do not speak. Contracts translated to Hindi also had a disenfranchising effect, as many community members cannot read Hindi script. As a result, the rehabilitation process has been shrouded in mystery to a majority of those affected and the distrust between community members and the Government has increased.

Appendix: Community Case Studies

Kathputli Colony

1) History

For the past fifty years, Kathputli colony has been home to hundreds of residents, including a large contingent of artists, sculptors and street performers that have gained global recognition. When the Kathputli residents first arrived, the land was virtually uninhabitable. Community members spent many years building up the land. The Delhi Government has recently contracted Raheja, a private developer, to convert the land into a shopping mall and the site of Delhi's first skyscraper. The Kathputli colony residents are to be moved to a transit camp during the construction process and then shifted to high-rise buildings in the new complex when the development is complete.

2) Legal history

A petition—*Bhule Bisre Kalkar Co-Operative Industrial Production Society & Ors v. Union of India & Ors, Writ Petition (Civil) No. 1290/2014*—was filed with the Delhi High Court on behalf of twenty-eight Kathputli community members who sought an injunction of the development project and a request for an alternative plan for rehabilitation. The petition claimed that the petitioners were aggrieved by the development project in several ways. These include, among other things, the lack of adequate survey and notice in identifying eligible households, a failure of the Government and developer (Respondents) to consider the needs of the residents in building the transit and permanent accommodations, and contraventions with the development norms and policies set forth in the Delhi Master Plan 2021. The Respondents submitted that adequate notice had been provided and that suggestions by Petitioners on the construction of the common facilities and facilities at the transit camp would be considered for review by the Respondents. On such basis, the petition was disposed on 20 March 2014 with the Court directing DDA to play a “supportive role to enable the residents of the colony” to shift to the Transit Camp. The Court further held that relocation shall be conducted “strictly in the accordance of the law.”

3) Current problems

The primary problem, according to the leaders of Kathputli, lies in the complete lack of consideration of the special needs of the Kathputli residents in the formulation of development plans. Specifically, many of the community members are performers and artists, who have been traditionally conducting a substantial part of their work at home or at the community's workshop space devoted to this purpose. The DDA, however, has not taken the requirements of their livelihood into its plan for rehabilitation. The new flats in the high-rise building would prohibit many artists and artisans from practicing their craft. For example, puppeteers will no longer be able to build their tall puppets within the confines of a flat, sculptors will not be able to haul in and work their heavy blocks of stone, and metal workers will not be able to hone their craft without disturbing their neighbors. In short, the spatial limitations of the new flats will jeopardize the livelihood of the Kathputli artists.

The relationship between Kathputli community members, the DDA, and other Government authorities involved in the redevelopment process has also been problematic. Since the sanctioning of the project in 2007, three surveys have been carried out, one by a private contractor and two by local authorities (DDA and DUSIB). At the time of the writing of this memo, the results of the surveys had not yet been shared with the community. In addition, according to the community, the colony was not given notice prior to the DDA survey. When DDA officials arrived, they surveyed 3,300 homes but only committed to provide 2,800 flats in the new development, leaving a gap of 500 families that would be displaced. Another reason of concern for residents is that all communication concerning the development project has been between the Government and Raheja. Colony members were never consulted during the development process.

Many community members claim that DDA officials have tried to trick them in a variety of ways. In one instance, the DDA distributed maps with the text upside down so that it appeared that the high-rise flats to be given to them would be at the front of the redeveloped site, rather than behind the commercial buildings, as is actually the case. Government officials also handed out contracts to be signed by the community that stated that the signor declares that he or she is an illegal occupant of the colony and agrees to give up all rights to the land. Some community members

signed the papers, but they had no idea what they were signing because they could not read the document.

Finally, the community is not satisfied with the transit camp where they are to be placed during the construction project. Community members expressed concerns that the transit camp “feels like a prison” due to restrictions placed on their freedom of movement in and out of the camp (residents are required to sign in and out when they leave), the curfew imposed early at night, and the fact that there are cameras all throughout the camp. They have also complained that there is a shortage of space and a lack of adequate basic services, such as toilets and water tanks. Kathputli residents are also concerned because it is unclear how long they will be required to stay in the camp. The community fears that if they relocate to the transit camps, they will not be allowed to move back to their original location.

4) Moving forward

Moving forward, the Kathputli residents are most concerned that their livelihoods will be destroyed if they are relocated to the transit camp. Rather than experience in situ rehabilitation, community members desire the rights to the land on which they have lived for decades. One member discussed his dream of building a stage in front of every home so that tourists could travel through the community and enjoy the various forms of art, similar to the arrangement provided to artisans at Dilli Haat.¹⁰²

¹⁰² Dilli Haat is a famous market in Delhi hosting artisans with their art crafts from all across India.

Baljeet Nagar

1) History

Baljeet Nagar (also called Punjabi Basti or Gayatri Colony) is part of Anand Parvat, a settlement created in the early nineties by migrants from nearby states, primarily Rajasthan and Bihar. The vast majority of the residents of Baljeet Nagar, around 80%, are Dalits. Most moved to Delhi in search of better employment and education opportunities.

Baljeet Nagar has around 4,000 *jhuggies*. A quarter of the *jhuggies* were demolished by the DDA on the 23rd and 24th March 2011. No notice was provided to the residents prior to the demolition, nor were any meaningful rehabilitation plans on record. A few hundred armed police officers surrounded the area on the eve of the 22 March, blocking access to and from the entire area. Residents consistently reported that police officers explained their presence by claiming a high ranking Government official was expected to pay a visit to the community in the following days. Other residents reported that they were forced to pay significant amounts of money to the DDA and police officers as bribes for having their *jhuggi* spared by the demolition.

The bulldozers sent by the DDA were eventually stopped at 3:00 p.m on the 24 March by a stay order issued by the Delhi High court in response to a Civil Writ Petition (2033/2011) filed by a platform of NGOs (see below). By then, 1,000 *jhuggies* had been demolished (600 on the 23rd and 400 on the 24th) and eight residents were arrested and arbitrarily detained at the Patel Nagar Police Station for several hours. As a result of the demolitions, around 4,000 people were made homeless and many children were forced to miss important exams at school, due to closed and impassable roads.

Residents have rebuilt some of their *jhuggies*. Yet, notwithstanding repeated court orders (see below), the delivery of basic services through state intervention have been nonexistent, or highly deficient. This is especially the case with respect to potable water, which was only available by truck once a week during our visit. However, some residents have privately arranged for electricity connections and most of the children are enrolled in nearby government schools.

2) Legal History

On 24 March 2011, activists from the Human Rights Law Network (HRLN) filed an urgent petition Civil Writ Petition 2033/2011 at the Delhi High Court. At the same time, activists from the Indo Global Social Service Society (IGSSS), the National Campaign for Dalits and Human Rights (NCDHR), the Center for Social Equity and Inclusion (CSEI), the Labor Education and Development Society (LEDS), the Shahri Adhikar Manch (SAM), and HAQ (World Faith India) joined thousands of residents in a peaceful demonstration to stop the demolitions. At 3:00 p.m. that same day, the Delhi High Court issued a stay order and the demolition was finally stopped after the destruction of 1,000 *jhuggies*, and the displacement of around 4,000 people.

In an order issued on 25 March, the Court recognized the significant impact that an illegal demolition has on a “bundle of rights” and ordered the DDA Commissioner to take appropriate action to ensure that basic facilities were provided. More specifically, the Court: 1) directed the DDA to ensure the supply of basic services, including drinkable water, food and health services; 2) raised questions regarding the legality of the operation, focusing especially on whether any door-to-door survey was actually carried out by the competent authorities prior to commencing the demolitions; and 3) asked the DDA to state on affidavit their plan of action to ensure the protection of the right of education of children.

The Court reiterated its ruling in subsequent orders dated 31 March and 4 and 7 April, detailing the plan of action that the DDA was instructed to follow. The Court instructed the *Delhi Jal Board* to deliver drinkable water on a regular basis and ordered the distribution of food rations under the *Aaap Ki Rasoi Scheme*. The Court gave DUSIB five months to complete a new survey, examine claims of eligibility, and notify residents. However, DUSIB was unwilling to accept residents’ documents and ultimately made the exercise unviable. In its final order in December 2012, the Court mandated representatives for the Petitioner to compile a list of residents along with their documentation and submit it to DUSIB, which should had determined their claims within 6 months.

3) Current problems

The demolition of the *jhuggies* in Baljeet Nagar had an immediate effect on the lives of all the residents in the community. For example, many residents (including those whose *jhuggies* were not demolished) reported that the demolition resulted in substantial labor time loss, wage reductions, and permanent job loss. This is due, in part, to the fact that during the demolition the entire area was surrounded by armed police officers, effectively blocking the free movement of people. According to the Eviction Impact Assessment (EIA) carried out by a group of NGOs,¹⁰³ in the three months following the demolition, “average income losses, including job loss, lost time, and wage reductions totaled nearly to Rs. 8,000.”

More directly, the demolition had a substantial effect on those who lost their homes. The EIA calculates that the average household lost over Rs. 30,000 from the destruction of their housing structure(s) alone. In addition, households suffered nearly Rs. 20,000 in the destruction of property located in the house, which included televisions, refrigerators, clothing, jewelry, children’s books, toys and uniforms, and kitchen items. Many residents report to have lost at least one document required to prove eligibility for rehabilitation purposes and to access a variety of Government schemes, including ration cards, caste certificates, land records, voter identity cards, and birth certificates. Moreover, the EIA calculates that “in the three months following the demolition . . . total food expenditures across a variety of categories dropped by close to Rs. 400.” Many residents also report that they now have to travel long distances to acquire potable water. Finally, the EIA reports that enrollment in school dropped by almost 8% after the demolition.

These figures measure the “average” loss of households and individuals that were involved (one way or another) in the demolition of March 2011. What they do not capture is the differential impact of the demolition across the most vulnerable portions of the population, including pregnant or lactating women and young children.

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□ The EIA was based on the UN Basic Principles and Guidelines on Development-based Evictions and Displacement. It consisted of a detailed survey instrument, administered to a representative sample of 102 families affected by the demolition. The exercise, carried out between 9 and 13 June 2011, was designed to give an estimate of the damages suffered by collecting data relating to a wide variety of harms, including assessment of the demolition’s impact on housing, livelihood, access to food and water, health (both physical and psychological), and education over the three months following the demolition.

For these groups, even temporary decreases of food and water consumption create much higher risks of permanent consequences to their health and life prospects.

4) Moving forward

A public hearing was organized on site at Baljeet Nagar on 17 April 2011. Seventeen testimonies documented the various rights violations experienced before, during and after the demolition. These included police bribes, lack of due notice prior to the demolition, loss of belongings and documents, lack of access to health services, physical injuries, and interruption of children's education. The jury at the hearing was composed of Justice AP Shah, Amita Joseph, Miloon Kothari, and Jaya Shrivastava. The jury's goal was to ascertain the impact that the demolition had on a range of rights, including the rights to housing, food, health, livelihood, and education.

In addition, a group of NGOs and activists presented several direct complaints to the Delhi Commission for Child Rights, representing the grave conditions of children living in Baljeet Nagar, as well as to DUSIB, asking for significant improvements to the delivery of basic services, as well as the completion of a detailed survey, determining the eligibility of single residents for relocation programs.

Gadia Lohar Basti¹⁰⁴

1) History

The Gadia Lohar Basti community is a nomadic and scheduled tribe often referred to as Khanabadosha. The community originally migrated from Rajasthan to Delhi in 1965. They were encouraged by the Government to settle in a plot of land in West Delhi. The community ultimately agreed and settled in the area and the Gadia Lohar Basti came into existence that same year. As blacksmiths, they were able to produce iron works and sell them on the side of the road, thus providing a viable livelihood.

In 2009, the Government sought to reclaim the land in order to construct a flyover connecting *Jawahar Lal Nehru Stadium* to *Tyagraj Stadium* for the upcoming Commonwealth Games. Though the residents all met the necessary criteria for resettlement, the Government demolished their settlement without providing alternative accommodations. The Government claimed it had a “right of way,” meaning it had the right to use the land for a common purpose, i.e., building the road for the Commonwealth Games. Under the “right of way” designation, the Government does not have the burden of rehabilitating or resettling the community.

The demolition of the community was carried out without prior notice or safeguards for rehabilitation. It resulted in the displacement of more than 35 families. Because the homes were demolished without notice, many of the *jhuggi* dwellers were unable to secure identity cards and other relevant documents necessary for establishing a claim for relocation.

2) Legal history

Four individual writ petitions were filed related to the Gadia Lohar Basti in the Delhi High Court. The first was filed in 2007 and three were filed following the 2009 demolition. The 2009 petitions addressed the Government’s claim of a “right of way” and considered whether residents on the land were eligible for compensation or rehabilitation. The community argued that the Government was required to provide

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□ Also referred to as Lohar Prem Nagar Basti.

rehabilitation. The Court agreed, holding that the Government is obliged to provide alternative accommodations even when it engages in “right of way” takings. Importantly, the Court recognized that the community had been living at the location well before roads existed in the area.

The court ultimately ordered the parties to engage meaningfully regarding relocation. However, despite strong directives from the judiciary with time-barred implementation guidelines the Government has failed to comply with decision. In particular, the Government has failed to provide alternative rehabilitation to all Petitioners deemed eligible per Master Plan Document 2021. This has triggered a range of legal actions, which includes a pending contempt petition.

3) Current problems

Since the demolition, the community has split and moved to opposite sides of a busy road. Both groups live in intolerable conditions. The community is located along a sewage river. During rainy seasons, sewage seeps into their homes, causing major health problems in the community. This location also inhibits their ability to sell their wares on the side of the road, limiting their capacity to practice their livelihood.

Both groups lack access to potable water. As a result, community members must travel a considerably distance to retrieve water for the community. The lack of water exacerbates a second concern: the lack of access to adequate sanitation facilities. The lack of adequate sanitation poses significant health risks, which disproportionately impact on females in the communities. For example, due to safety concerns, females can only relieve themselves at certain times during the day. This leads to urinary tract infections and other health problems.

4) Moving forward

Despite the Court order for meaningful engagement, none has occurred. The community still hopes to engage with the Government in order to relocate from their current location to more tolerable living conditions.